

**INDIANA FINANCE AUTHORITY
PETROLEUM REMEDIATION GRANT AGREEMENT**

This **Petroleum Remediation Grant Agreement** (“Agreement”) has been entered into and shall be effective as of the “Execution Date” (as denoted on the attached Master Schedule, which is incorporated herein by this reference, the “Master Schedule”), by and among the Indiana Finance Authority (“Authority”), the “Consultant” and “Community” (each as denoted in the Master Schedule). The parties to this Agreement in consideration of the mutual covenants, obligations and stipulations set forth in this Agreement, agree as follows:

1. PURPOSE OF AGREEMENT:

The purpose of this Agreement is to make a conditional grant in the amount not to exceed the Grant Funds (as denoted in the Master Schedule as modified from time to time) from the Environmental Remediation Revolving Loan Fund (“Brownfields Fund”) for the benefit of the Community to provide for the payment of qualified costs and expenses incurred by the Consultant in the completion of all activities, work, services and reports required to be undertaken pursuant to this Agreement (“Project Activities”) at the site denoted in the attached Master Schedule (“Site”). Grant Funds shall be used exclusively in accordance with this Agreement and in accordance with Ind. Code 13-19-5 et. seq. (the “Act”). As used in this Agreement, “Project Activities” means those remediation activities that are:

- A. Described in the work order, proposal, or other writing evidencing the binding terms pursuant to which the Project Activities will be undertaken by the Consultant (1) attached hereto as part of Exhibit A to this Agreement if such written undertaking has been selected as of the Execution Date or (2) to hereafter be attached hereto as part of Exhibit A to this Agreement if such written undertaking has not been so selected as of the Execution Date (“Workplan”), which as and when attached shall be incorporated herein by this reference; and

2. COMPLETION OF PROJECT ACTIVITIES:

Within 2 years from the Execution Date or, if sooner, by each activity-based deadline otherwise noted in the Workplan or Exhibit A (each a “Completion Deadline Date”), all Project Activities must be completed to the satisfaction of the Authority consistent with its rules, regulations, policy memoranda, guidelines and directives applicable to a petroleum remediation grant as modified from time to time by the Authority’s board (“Guidelines”). The Consultant may request that any such Completion Deadline Date be extended. If approved by the Authority, the Completion Deadline Date will be extended to the date set forth in such approval; however, all other provisions of this Agreement shall remain the same and in full force and effect. Additionally, in the event the Authority determines that the Consultant is not working with reasonable dispatch toward completing its Project Activities under this Agreement, the Authority may unilaterally fix and determine the new Completion Deadline Date to be any date that is at least 90 days after the date notice is given by the Authority to the Consultant, provided that such new Completion Deadline Date is no sooner than 1 year after the Execution Date. This Agreement shall be deemed to be substantially performed only when fully performed according to its terms and conditions and any written amendments or supplements.

3. CONSULTANT/COMMUNITY; DUTIES AND RESPONSIBILITIES:

A. Consultant

The Authority has selected and engaged a consultant to perform the Project Activities and obligations of the “Consultant” by causing such party to enter into this Agreement.

B. Work to be Performed

The Workplan, as approved, together with any amendments made to it with the approval of the Authority, are made Exhibit A to this Agreement. Preparation of the Workplan, if not prepared as of the Execution Date (as evidenced by such not being attached as part of Exhibit A), is a Project Activity eligible for payment from Grant Funds. When any Workplan has been prepared by the Consultant, and approved by the Authority, it shall be attached to and become a part of Exhibit A. The scope of Project Activities described in the Workplan may be modified in a material way only if approved by the Authority. Notwithstanding any review, approval, inspection or other activity related to the Project Activities undertaken (or to be undertaken) by the Authority, the Consultant shall be solely responsible for the

proper design, implementation and other activities related to the Project Activities and its compliance with applicable Federal, State and local laws, including ordinances, regulations and rules and other legal authority, to which the Authority, the Community and Consultant are subject inclusive of the Act ("Law").

C. **Notifications**

The Consultant is responsible for providing notice to the Authority of the date and times upon which Project Activities will be performed. Communication of any changes to the date and times of the Project Activities is also the responsibility of the Consultant.

D. **Consent of Landowner**

The Community represents to the Authority and the Consultant that the parties to this Agreement have the right to enter the Site and to perform or cause to be performed the Project Activities throughout the term of this Agreement. In the event the Site is not owned by the Community, the Community has obtained an agreement from the appropriate and duly authorized person or persons for the parties to this Agreement to access the Site to perform the Project Activities throughout the term of this Agreement. Such agreement, if necessary, is attached as Exhibit B to this Agreement and is incorporated herein by this reference.

E. **Compliance with Program, Laws**

All Project Activities shall be performed in compliance with this Agreement and all Guidelines and Law. The Consultant agrees to be solely responsible to ensure that the use of the Grant Funds is in compliance with all Law. The Consultant acknowledges and agrees that any Grant Funds it receives are subject to repayment for failure to comply with this Agreement and the Law. Without limiting the generality of the foregoing, the Consultant acknowledges, certifies, represents, warrants and agrees as follows:

- (1) The Consultant, and its agents, shall abide by all ethical requirements that apply to persons who have a business relationship with the Authority or the State of Indiana ("State"), as set forth in Indiana Code 4-2-6 et seq., the regulations promulgated thereunder, Executive Order 04-08, dated April 27, 2004, Executive Order 05-12, dated January 10, 2005, and 25 Indiana Administrative Code 6, effective January 1, 2006. If the Consultant, or any of its agents, are not familiar with these ethical requirements, they should refer any questions to the State Ethics Commission, or visit the State Ethics Commission website at <<<<http://www.in.gov/ethics/>>>>. If the Consultant, or any of its agents, violate any applicable ethical standards, the Authority may, in its sole discretion, terminate this Agreement immediately upon notice to the Consultant. In addition, the Consultant may be subject to penalties under Indiana Code 4-2-6-12.
- (2) The Consultant certifies by entering into this Agreement, that neither it nor its principal(s) are presently in arrears in payment of its taxes, permit fees or other statutory, regulatory or judicially required payments to the Authority or the State. The Consultant agrees that any payments currently due to the Authority or the State may be withheld from payments due to the Consultant. Additionally, further work or payments may be withheld, delayed, or denied and/or this Agreement suspended until the Consultant is current in its payments and has submitted proof of such payment to the Authority or the State.
- (3) The Consultant warrants that it has no pending or outstanding criminal, civil, or enforcement actions initiated by the Authority or the State, and agrees that it will immediately notify the Authority of any such actions. During the term of such actions, the Consultant agrees that the Authority may delay, withhold, or deny work under this Agreement and any supplements or amendments.
- (4) The Consultant warrants that it and its subcontractors, if any, shall obtain and maintain all required permits, licenses, and approvals, as well as comply with all health, safety, and environmental statutes, rules, or regulations in the performance of Project Activities under this Agreement. Failure to do so may be deemed a material breach of this Agreement and grounds for immediate termination and denial of further rights to contract with the Authority.

- (5) The Consultant affirms that it is properly registered if necessary and owes no outstanding reports with the Indiana Secretary of State.
- (6) The Consultant agrees that the Authority may confirm, at any time, that no liabilities exist to the Authority, and, if such liabilities are discovered, the Authority may bar the Consultant from contracting with the Authority in the future, cancel existing contracts, withhold payments to setoff such obligations, and withhold further payments or purchases until the Consultant is current in their payments on their liability to the Authority and has submitted proof of such payment to the Authority.
- (7) As required by Indiana Code 5-22-3-7:
 - (a) The Consultant and its principals certify that (A) the Consultant, except for de minimis and nonsystematic violations, has not violated the terms of (i) Indiana Code 24-4.7 [Telephone Solicitation Of Consumers], (ii) Indiana Code 24-5-12 [Telephone Solicitations] , or (iii) Indiana Code 24-5-14 [Regulation of Automatic Dialing Machines] in the previous 365 days, even if Indiana Code 24-4.7 is preempted by federal law; and (B) the Consultant will not violate the terms of Indiana Code 24-4.7 for the duration of this Agreement, even if Indiana Code 24-4.7 is preempted by federal law.
 - (b) The Consultant certifies that its affiliates, principals, and agents: (A) except for de minimis and nonsystematic violations, have not violated the terms of Indiana Code 24-4.7 in the previous 365 days, even if Indiana Code 24-4.7 is preempted by federal law; and (B) will not violate the terms of Indiana Code 24-4.7 for the duration of this Agreement, even if Indiana Code 24-4.7 is preempted by federal law.

F. Reports, Records, Evaluations, Inspections

- (1) The Consultant shall document all uses of Grant Funds and maintain adequate books and accounts in accordance with generally accepted accounting principles or generally accepted governmental accounting principles, as applicable, consistently applied. The Consultant shall permit the Authority and its agents, employees, officers and representatives at any reasonable time to inspect, audit and examine such books and accounts. The Consultant agrees to cooperate fully with any such inspection, audit or examination.
- (2) The Consultant agrees to submit to the Authority at any time and from time to time such records and reports as may be required by the Authority, including evidence of payment(s) made to the Consultant.
- (3) The Consultant shall submit technical reports and documents as requested by the Authority until the Authority receives the final Consultant's Report and deems it acceptable. Such periodic reports and other documents are the sole means for determining payment under Section 5 of this Agreement.
- (4) The Authority or its authorized representative(s) may, with reasonable notice to the Community and the Consultant, enter the Site for the purpose of conducting any activity related to implementation of the Project Activities required by this Agreement ("Oversight Activities"), including, but not limited to, the following activities:
 - (a) monitoring the work;
 - (b) verifying any data or information submitted to the Authority;
 - (c) conducting investigations relating to contamination at or near the Site;
 - (d) obtaining samples;
 - (e) assessing the need for, planning, or implementing additional response actions at or near the Site;
 - (f) assessing implementation of quality assurance/quality control and/or health and safety practices
 - (g) assessing the Community's and Consultant's compliance with this Agreement; and

- (h) determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Agreement.

The Community and Consultant will ensure the cooperation of the Community's and Consultant's employees in any Oversight Activities. The Consultant will take all reasonable action necessary to correct or cure any problems or deficiencies identified by the Authority or its authorized representative(s) during its Oversight Activities or at any point during implementation of the Project Activities. During any Project Activities and Oversight Activities at the Site, all parties to this Agreement will adhere to the requirements of the health and safety plan, which shall be specific to the Site, prepared by the Consultant. The Consultant is solely responsible for enforcing such plan. Notwithstanding any provision of this Agreement, the State retains all of its access authorities and rights under IC 13-25-4-5, IC 13-24-1, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.*, the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*, and any other applicable statutes or regulations.

4. **PROJECT ACTIVITIES, BUDGET DETAIL:**

A. **Budget Detail**

Unless specified, all references in this Agreement to contamination are to the contamination denoted in the Workplan.

The Consultant certifies that the approved Workplan it submitted, as included as Exhibit A to this Agreement, reflects costs associated with performing Project Activities in accordance with the type(s), volume(s) and location(s) of contaminants of concern on the Site noted in the approved Workplan (the "Area(s) of Concern"). In the event the actual cost of assessment or remediation incurred by the Consultant is less than the cost for the Project Activities estimated in the approved Workplan for any reason (including, but not limited to, reduced actual contaminant volume), the Consultant will only be paid according to the actual costs incurred.

B. **Limitation on Use of Grant Funds**

No costs may be incurred by the Community or the Consultant prior to the Execution Date without the consent of the Authority. All costs and expenses incurred by the Community or the Consultant must be directly related to the conduct of Project Activities at the Area(s) of Concern, as identified and described in the Consultant's in the Workplan.

In the event previously undiscovered contaminants of concern ("Unknown Contaminants"), in any media (or in any containers) not previously identified in the approved Remedial Contract or Workplan that are the objective of assessment or remediation activities under this Agreement, are identified at the Site during implementation of the Workplan, the Authority is under no obligation to fund the cost of addressing such Unknown Contaminants. In the event that additional activity related to such Unknown Contaminants is deemed necessary or beneficial by the Authority, such supplemental activity may be considered for reimbursement by the Authority only following the acceptance by the Authority of the Consultant's change order, which order shall describe the nature and cost of the proposed additional activity.

C. **Limitation on Amount of Grant Funds**

Notwithstanding anything in this Agreement to the contrary, the Authority shall not be obligated to provide more than the Grant Funds provided under this Agreement.

5. **PAYMENT OF GRANT FUNDS:**

A. **General**

After the Execution Date, the Authority agrees to pay the Consultant the Grant Funds disbursed in accordance with subdivisions A. and B. of Section 4 and B. and C. of this Section 5. Disbursement of Grant Funds will be pursuant to the Guidelines in effect as of the Execution Date, which applicable parts

thereof have been attached as Exhibit C to this Agreement and is incorporated herein by this reference, or as such Guidelines are later modified by the Authority so long as any such modifications do not materially affect the amount or timing of any such payments. Under the Guidelines, the Authority will disburse Grant Funds to the Consultant only after the Project Activities at the Site, as identified in the Consultant Workplan, have been achieved. An illustration of Project Activities and corresponding objectives that trigger payment is attached as Exhibit D to this Agreement and is incorporated herein by this reference. All payments pursuant to the Guidelines will be based on Project Activities and corresponding objectives.

B. Schedule, Timeliness of Payment

To facilitate payment timeliness for all the parties, the Authority will distribute Grant Funds to the Consultant, as described in this Section 5, no later than 30 business days from the Authority's receipt of a completed progress milestone report submitted by the Consultant evidencing completion of the Project Activities. A progress milestone report shall be comprised of (1) narrative and, if applicable, photographic descriptions of work performed, including any other information requested by the Authority; and (2) appropriate technical data including laboratory results and other measurements from all field sampling performed subsequent to the previous progress milestone report, if any. Upon the Authority's favorable review of the progress milestone report, the Authority shall make a disbursement of the Grant Funds to the Consultant. Nothing in this Section shall prevent the Authority in its discretion from distributing part of the Grant Funds to the Consultant following the Authority's receipt of a completed progress milestone report submitted by the Consultant evidencing completion of part of the Project Activities.

6. RESERVED.

7. TERMINATION, RETURN OF FUNDS:

If the Authority, through monitoring or reviewing of the Project Activities or otherwise, determines that the Consultant is not performing or completing the Project Activities in accordance with its obligations under this Agreement, the Authority may inform the Consultant of such determination. The Consultant acknowledges and agrees that if it does not (a) use the Grant Funds as agreed or (b) correct any reasonable non-compliance determination by the Authority within a reasonable time, it shall forfeit any right to additional disbursements and will be obligated to repay to the Authority previously disbursed Grant Funds.

8. ENVIRONMENTAL REPRESENTATIONS:

The Community represents and warrants that:

- A. the Community did not generate or transport hazardous substances, pollutants, or contaminants at or to the Site;
- B. the Community did not own the Site or operate any facility at the Site at the time of disposal of hazardous substances, pollutants and contaminants at the Site;
- C. all disposal of hazardous substances, pollutants and contaminants at the Site occurred before the Community acquired the Site (if applicable);
- D. the Community has not caused, contributed to or exacerbated the release of hazardous substances, pollutants or contaminants on or from the Site; and
- E. to the best of the Community's knowledge, all other information provided by the Community in its Grant Application is true and accurate.

9. STOP WORK ORDER:

The Authority may order the Consultant to stop all Project Activities immediately in the event of a demonstrated imminent and substantial threat to human health or the environment. In the event that such an order is issued, the

Consultant will submit to the Authority an estimate of additional costs, if any, which result from the order. If the Authority determines that the Site conditions resulting in the stop work order were not caused by the Consultant or a subcontractor to the Consultant through disregard for conditions that would be reasonably expected at similar sites, or through a negligent act or omission by the Consultant or a subcontractor to the Consultant, then the Consultant will be eligible for reimbursement of reasonable additional project costs. Any supplemental disbursement must be authorized by the Authority.

10. **GOVERNING LAW:**

This Agreement shall be construed in accordance with and governed by the laws of the State and any suit must be brought in the State.

11. **COMPLIANCE WITH LAW:**

The Consultant agrees to comply with all licensing and permitting requirements for the Project Activities, if any, and all applicable Law required by such licensing and permitting requirements to be included in this Agreement are incorporated by this reference. The Consultant agrees to comply with all applicable Law. The enactment of any Federal or State statute, or the promulgation of regulations under such statute, after the Execution Date may be reviewed by the Authority in its discretion to determine whether or not this Agreement is required to be amended to effectuate such new statute or regulation.

12. **PENALTIES, INTEREST, ATTORNEY'S FEES:**

The Authority will in good faith perform its required obligations under this Agreement, however it does not agree to pay any penalties, liquidated damages, interest, court costs or attorney's fees unless specifically required by State law.

13. **INDEMNIFICATION:**

By the Community: To the extent permitted by Law, the Community agrees to indemnify, defend and hold harmless the State, the Authority and their agents, officers, and employees from any and all claims, demands, losses, expenses, damages (general, punitive or otherwise) and suits, including (but not limited to) court costs, attorney's fees and other costs and expenses caused by any negligent act or omission of the Community. To the extent permitted by Law, the Community agrees to indemnify and hold harmless the Authority from and against any and all costs and expenses including (but not limited to) court costs, attorney's fees and other costs and expenses, incurred by the Authority in its enforcing this Agreement against the Community.

By the Consultant: To the extent permitted by Law, the Consultant agrees to indemnify, defend and hold harmless the State, the Authority and their agents, officers, and employees from any and all claims, demands, losses, expenses, damages (general, punitive or otherwise) and suits, including (but not limited to) court costs, attorney's fees and other costs and expenses caused by any negligent act or omission of the Consultant or any subcontractors. To the extent permitted by Law, the Consultant agrees to indemnify and hold harmless the Authority from and against any and all costs and expenses including (but not limited to) court costs, attorney's fees and other costs and expenses, incurred by the Authority in its enforcing this Agreement against the Consultant.

Neither the State nor the Authority is providing any indemnification, either jointly or severally, to the Community or the Consultant or any subcontractors.

14. **INDEPENDENT CONTRACTOR:**

All the parties, in their performance of this Agreement, are acting in an individual capacity and not as agents, employees, partners, joint ventures or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever. No party will assume any liability for any injury, including death, to any other party or person or any damage to any property arising out of the acts or omissions of the agents, employees or subcontractors of another party.

15. INSURANCE:

- A. The Community and/or the Consultant, including any subcontractors, shall secure and keep in force during the term of this Agreement, the following insurance coverages, covering the Community and the Consultant for any and all claims of any nature which may in any manner arise out of or result from this Agreement:
- (1) Commercial general liability, including contractual coverage, and products or completed operations coverage (if applicable), with minimum liability limits of \$500,000 per person and \$1,000,000 per occurrence unless additional coverage is required by the Authority or the State.
 - (2) Automobile liability with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
 - (3) The Consultant shall provide proof of such insurance coverage by tendering to the undersigned Authority representative, a certificate of insurance prior to the commencement of this Agreement. Workers compensation coverage meeting all statutory requirements of Indiana Code 22-3-2. In addition, an "all states endorsement" covering claims occurring outside the State if any of the services provided under this Agreement involve work outside of Indiana.
- B. The Consultant's insurance coverage must meet the following additional requirements:
- (1) Any deductible or self-insured retention amount or other similar obligation under the insurance policies shall be the sole obligation of the Consultant.
 - (2) The Authority and the State will be defended, indemnified, and held harmless to the full extent of any coverage actually secured by the Consultant in excess of the minimum requirements set forth above. The duty to indemnify the Authority and the State under this Agreement shall not be limited by the insurance required in this Agreement.
 - (3) The insurance required in this Agreement, through a policy or endorsement, shall include a provision that the policy and endorsements may not be canceled or modified without 30 days notice to the Authority.
 - (4) Failure to provide insurance as required in this Agreement may be deemed a material breach of contract entitling the Authority to immediately terminate this Agreement.

The Consultant shall furnish a certificate of insurance and all endorsements to the Authority with its delivery of the Consultant Supplement.

16. DEBARMENT AND SUSPENSION:

- A. The Consultant certifies, by entering into this Agreement, that neither it nor its principals nor any of its subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into this Agreement by any federal agency or by any department, agency or political subdivision of the State. The term "principal" for purposes of this Agreement means an officer, director, owner, partner, key employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Consultant.
- B. The Consultant certifies that it has verified the suspension and debarment status for all sub-contractors receiving funds under this Agreement and shall be solely responsible for any recoupments or penalties that might arise from non-compliance. Consultant shall immediately notify the Authority if any sub-contractor becomes debarred or suspended, and shall, at the Authority's request, take all steps required by the Authority to terminate its contractual relationship with the sub-contractor for work to be performed under this Agreement.

17. DISCRIMINATION PROHIBITED:

Pursuant to Indiana Code 22-9-1-10, and the Civil Rights Act of 1964, the Consultant and any subcontractors shall not discriminate against any employee or applicant for employment, to be employed in the performance of this Agreement, with respect to the employee's or applicant's hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee's or applicant's race, color, religion, sex, disability, national origin or ancestry. Acceptance of this Agreement also signifies compliance with applicable Federal laws, regulations and executive orders prohibiting discrimination in the provision of services based on race, color, national origin, age, sex, disability or status as a veteran. Breach of one or both of these covenants may be regarded as a material breach of this Agreement.

The Consultant agrees to assure that all parties performing work on the Project Activities comply fully with the provisions of any MBE/WBE participation plans that have been submitted.

18. NOTICE TO PARTIES:

Whenever any notice, statement or other communication shall be sent to the Authority, the Community or the Consultant, it shall be sent to the following address, unless otherwise specifically advised by notice:

A. Notice to the Authority shall be sent to:

Director of Environmental Programs
Indiana Finance Authority
100 North Senate Avenue, RM 1275
Indianapolis, IN 46204

B. Notice to the Community shall be sent to the "Community's Notice Address" as set out in the Master Schedule

C. Notice to the Consultant shall be sent to the "Consultant's Notice Address" as set out in the Master Schedule.

19. AUTHORITY TO BIND:

Notwithstanding anything in this Agreement to the contrary, each of the signatories for the Community and the Consultant represent that he or she is duly authorized to execute this Agreement on behalf of the Community or the Consultant, respectively. Each approval, acceptance, power, review, consent or other action recited in this Agreement as being vested in the Authority may only be undertaken by an instrument signed in advance by the Public Finance Director of the State or Director of Environmental Programs of the Authority (or any Authority representative to whom the Authority's board from time to time empowers by its general or specific resolution to act in matters related to the Brownfields Fund) or their designees, and may be withheld or delayed in their discretion.

20. MAINTAINING DRUG-FREE WORKPLACE (EXECUTIVE ORDER NO. 90-5):

A. The Consultant covenants and agrees to make a good faith effort to provide and maintain during the term of this Agreement a drug-free workplace. The Consultant will give notice to the Authority within 10 days after receiving actual notice that an employee of the Consultant or any subcontractor, who serves in or could be expected to serve in a capacity related to the Project Activities, is convicted of a criminal drug violation occurring in the Consultant's workplace.

B. In addition to subdivision A. of this Section 20, if the Grant Funds exceed \$25,000, the Consultant and any subcontractor further agree that this Agreement is expressly subject to the terms, conditions, and representations of the following certification:

This certification is required by Executive Order No. 90-5, April 12, 1990, issued by the Governor of Indiana. Pursuant to its delegated authority, the Indiana Department of Administration is requiring the

inclusion of this certification in all contracts and grants from the State in excess of \$25,000.00. No award of a contract shall be made, and no contract, purchase order or agreement, the total amount of which exceeds \$25,000.00, shall be valid, unless and until this certification has been fully executed by the Community and the Consultant and made a part of the contract or agreement as part of the contract documents.

The Consultant certifies and agrees that each will provide a drug-free workplace by:

- (1) Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Consultant's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;
 - (2) Establishing a drug-free awareness program to inform its employees of (a) the dangers of drug abuse in the workplace; (b) the Consultant's policy of maintaining a drug-free workplace; (c) any available drug counseling, rehabilitation, and employee assistance programs; and (d) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;
 - (3) Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment, the employee will (a) abide by the terms of the statement; and (b) notify the Consultant of any criminal drug statute conviction for a violation occurring in the workplace no later than 5 days after such conviction;
 - (4) Notifying the State within 10 days after receiving notice from an employee under subdivision (3)(b) above, or otherwise receiving actual notice of such conviction;
 - (5) Within 30 days after receiving notice under subdivision (3)(b) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (a) taking appropriate personnel action against the employee, up to and including termination; or (b) requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and
 - (6) Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (1) through (5) above.
- C. The Consultant and any subcontractors further agree that the failure of the Consultant and any subcontractor to comply in good faith with subdivision A. of this Section 20, or falsifying or otherwise violating subdivision B. of this Section 20, shall constitute a material breach of this Agreement. Any breach entitles the Authority to impose sanctions against the Consultant and any subcontractors, including (but not limited to) recovery of the Grant Funds, cancellation of this Agreement, and debarment of the Consultant or any subcontractor from doing further business with the Authority or the State for up to 3 years.

21. FORCE MAJEURE:

In the event that the Authority, the Community or the Consultant is unable to perform any of its obligations under this Agreement, or to enjoy the benefits of this Agreement, as a result of natural disaster, actions or decrees of governmental bodies or communication line failure not the fault of the affected party ("Force Majeure Event"), the party who has been so affected shall immediately give notice to the other parties and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Agreement shall be immediately suspended. If the period of nonperformance exceeds 30 days from the receipt of notice of the Force Majeure Event, the parties whose ability to perform have not been affected may, by giving notice, terminate this Agreement. If so terminated, the Consultant will be paid for previously unreimbursed Project Activities. Such payment shall be made following receipt by the Authority of required documentation and review by the Authority of the same. Upon cancellation by the Authority and following final payment to the Consultant by the Authority, the Authority shall not be obligated to disburse additional Grant Funds.

22. SEVERABILITY:

The invalidity of any section, subsection, clause or provision of this Agreement shall not affect the validity of the remaining sections, subsections, clauses or provisions of the Agreement.

23. REMEDIES NOT IMPAIRED:

No delay or omission of the Authority in exercising any right or remedy available under this Agreement shall impair any such right or remedy or constitute a waiver of any default or an acquiescence to any default. A single or partial exercise of any power does not preclude the further exercise of that power or right or the exercise of any other power or right.

24. TAXES:

The Authority is exempt from Federal, State and local taxes. The Authority will not be responsible for payment of any taxes levied on the Community or the Consultant or any subcontractors as a result of this Agreement.

25. WAIVER OF RIGHTS:

No right conferred on any party under this Agreement shall be deemed waived and no breach of this Agreement excused, unless such waiver or excuse shall be by the party claimed to have waived such right.

26. ACCESS TO RECORDS:

The Consultant and any subcontractors shall maintain all books, documents, papers, accounting records and other evidence pertaining to the costs incurred under this Agreement. Such materials shall be made available at the Consultant's and any subcontractors' respective offices at all reasonable times during the term of this Agreement and for 5 years after (a) the Completion Deadline Date or (b) the resolution of any applicable findings regarding this Agreement by the State Board of Accounts, whichever is later. The Consultant shall ensure the cooperation of their respective employees and subcontractors in such monitoring and evaluation efforts. The Consultant will take all actions necessary to correct or cure any problems or deficiencies identified by the Authority during its monitoring and evaluations.

27. CHANGES, EXHIBITS, ATTACHMENTS TO AGREEMENT:

This Agreement may not be changed, amended or modified orally. Any change, amendment or modification must be in writing and signed by all the parties. Any consent, approval, review, determination, notice, order, waiver, excused action, request or other action required or allowed under this Agreement shall only be effective if done in writing signed in advance by the applicable party and prior to the other party taking any action in reliance on such writing. This Agreement merges and supersedes all prior agreements, negotiations and representations of any kind among the Authority, the Community and the Consultant relating in any manner to the subject matter and transactions contemplated by this Agreement. This Agreement and its exhibits and any other attachments constitute the entire agreement among the Authority, the Community and the Consultant concerning the

Agreement. All exhibits and any other attachments referred to in this Agreement, and all exhibits, other attachments, Law and papers are incorporated into this Agreement by reference are deemed incorporated into this Agreement by this reference as though fully set forth in this Agreement. In the event of any inconsistency between this Agreement and anything contained in an Exhibit to this Agreement or in any subsequent document or paper referenced herein, this Agreement shall prevail.

28. CONFLICT OF INTEREST:

A. As used in this section:

“Immediate Family” means the spouse and the emancipated children of an individual.

“Interested Party” means:

- (1) The individual executing this Agreement;
- (2) Any individual who has an interest of three percent or more of the Community or the Consultant; or
- (3) Any member of the Immediate Family of an individual specified under subdivision (1) or (2).

“Commission” means the State Ethics Commission.

- B. The Authority may cancel this Agreement without recourse by the Community or the Consultant if an Interested Party is an employee of the Authority or the State.
- C. The Authority will not exercise its right to cancel this Agreement under this Section 29 if the Community or the Consultant gives the Authority an opinion of the Commission indicating that the existence of this Agreement and the employment by the Authority or the State of the Interested Party does not violate any statute or code relating to ethical conduct of employees of the Authority or State employees. The Authority may take action, including cancellation of this Agreement, consistent with an opinion of the Commission.
- D. The Community and the Consultant have an affirmative obligation under this Agreement to disclose to the Authority when an Interested Party is, or becomes, an employee of the Authority or the State. The obligation under this Section 29 extends only to those facts that the Community or the Consultant knows or reasonably should know.

29. NON-COLLUSION, ACCEPTANCE:

Each of the Community and the Consultant attests under penalties of perjury that he or she (a) is a contracting party or the representative, agent, member or officer of a contracting party, (b) has not (nor has any other member, employee, representative, agent or officer of such contracting party) directly or indirectly, to the best of his or her knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay (and that he or she has not received or paid) any sum of money or other consideration for the execution of this Agreement other than that which may appear upon the face of this Agreement.

30. INSURANCE RECOVERY:

Through the use of Grant Funds, the Community may obtain environmental data that may be used to recover moneys from insurance policies providing coverage for Project Activities undertaken due to environmental contamination at the Site. Under this Agreement, any moneys recovered from such insurance policies will be deemed to be moneys leveraged by the Brownfields Fund. In the event that the amount of such moneys exceeds the total cost of Project Activities and any other remediation of contamination undertaken by the Community at the Site, the Community agrees to use such excess funds for brownfield redevelopment activities approved by the Authority. If the Community does not use such excess funds in full as provided in this Section 30 within 2 years of the receipt of such funds, the Community shall promptly transfer any remaining funds to the Authority. The

Authority may request documentation from the Community about such insurance policies, any settlements that provide recovery, any excess funds and their use, including, but not limited to, additional remediation or brownfields redevelopment. The conditions on the use of such excess funds as provided in this Section 30 survive the term of this Agreement.

31. CANCELLATION OF GRANT:

The Authority may cancel this Agreement upon the occurrence of any one of the following events:

A. Multi-Term Funding

The State Budget Director makes a determination that funds are not appropriated or otherwise available to support continuation of performance of this Agreement. (A determination by the State Budget Director that funds are not or otherwise available to support continuation of performance shall be final and conclusive.)

B. False, Misleading Representations

A finding that any representation or warranty the Community made in this Agreement or otherwise is false or misleading in any material respect when made. A finding that any representation or warranty the Consultant made in this Agreement, the Workplan or otherwise is false or misleading in any material respect when made.

C. Improper Use of Grant Funds

A finding that Grant Funds were used for a purpose other than Project Activities as provided in this Agreement.

D. Convenience

The Authority determines that termination of the Agreement, or a reduction in the amount of the Grant Funds, is in its best interest.

If the Authority determines to cancel this Agreement, the Consultant will be paid for previously unreimbursed Project Activities. Such payment shall be made following receipt by the Authority of required documentation and review by the Authority of the same. Upon cancellation by the Authority and following final payment to the Consultant by the Authority, the Authority shall not be obligated to disburse additional Grant Funds.

32. ASSIGNMENT; SUCCESSORS:

The Consultant shall not assign or subcontract the whole or any part of this Agreement without the Authority's consent.

33. EXECUTION; COUNTERPARTS:

Copies of this Agreement may be executed separately by the parties, and once executed by the parties to this Agreement, all such copies taken together shall constitute a single contract. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original for all purposes.

[Remainder of Page Left Intentionally Blank]

The parties represent and warrant that they have read and understand the terms of this Agreement, and the parties, by their respective signatures, do hereby agree to the terms of this Agreement as of the Execution Date.

“Consultant”

By _____

PRINTED NAME, TITLE

DATE

ATTEST:

By _____

PRINTED NAME, TITLE

DATE

APPROVED

“Community”

_____, Indiana

By _____

PRINTED NAME, TITLE

DATE

“Authority”

INDIANA FINANCE AUTHORITY

By _____
Cristopher R. Johnston, Pubic Finance Director
Of the State of Indiana

DATE

ATTEST:

By _____
James P. McGoff, Director of
Environmental Programs

DATE

APPROVED:

INDIANA STATE BUDGET AGENCY

By: _____
Christopher A. Ruhl, Director

DATE

**Instructional Notes
for creating a Complete Agreement**

1. No changes should be made in pages 1-14 of the Agreement.
2. The Community's municipal or corporate name needs to be inserted in the blank below "**Community**" on page 14 and the Consultant's corporate name needs to be inserted in the blank below "**Consultant**" on page 14.
3. Complete the Master Schedule (including checking the appropriate boxes); when complete, it should be initialed by the Consultant, Community & IFA at the bottom.
4. Exhibits B, C, and D should be complete before the Agreement is sent to the Consultant and Community for signature.
5. Exhibit A may or may not be available at the time of the Agreement is signed; if available, attach the Remedial Contract and Workplan(s). If not, when they are available, correspondence should clearly identify it as the materials constituting Exhibit A.
6. Discard this page after preparing the Agreement; it is not part of the Agreement.

**MASTER SCHEDULE
TO
REMEDIATION GRANT AGREEMENT**

Community is: _____, Indiana

Consultant is: _____

Execution Date shall be: _____, 2007

Grant Funds shall be: \$_____.00

“Community’s Notice Address” shall be:

“Consultant’s Notice Address” shall be:

Site address is:

Site name is:

Brownfield site number is:

Initials:

Community’s Representative: _____

Consultant’s Representative: _____

Authority’s Representative: _____

EXHIBIT A

- Authority-approved Workplan from Consultant

EXHIBIT B

- Consent from Property Owner (if required)

EXHIBIT C

- Parts of the Guidelines Applicable to a Petroleum Remediation Grant

EXHIBIT D

- Payment Guidelines – Activities and Objectives Summary and Schedule